

AN ACT

relating to the creation of programs to support the use of alternative fuels, including an alternative fuel program to be funded by the Texas emissions reduction plan fund and a grant program for certain natural gas vehicles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 386.252, Health and Safety Code, as amended by Chapters 1125 (H.B. 1796) and 1232 (S.B. 1759), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which:

(A) not more than four percent may be used for the clean school bus program;

(B) not more than 10 percent may be used for on-road diesel purchase or lease incentives; ~~and~~

(C) a specified amount may be used for the new technology implementation grant program, from which a defined amount may be set aside for electricity storage projects related to renewable energy;

(D) five percent shall be used for the clean

1 fleet program;

2 (E) two percent may be used for the Texas
3 alternative fueling facilities program;

4 (F) not less than 16 percent shall be used for the
5 natural gas vehicle grant program; and

6 (G) not more than four percent may be used to
7 provide grants for natural gas fueling stations under Section
8 394.010;

9 (2) for the new technology research and development
10 program, nine percent of the money in the fund, of which:

11 (A) up to \$200,000 is allocated for a health
12 effects study;

13 (B) \$500,000 is to be deposited in the state
14 treasury to the credit of the clean air account created under
15 Section 382.0622 to supplement funding for air quality planning
16 activities in affected counties;

17 (C) not less than 20 percent is to be allocated
18 each year to support research related to air quality as provided by
19 Section 387.010; and

20 (D) the balance is allocated each year to the
21 commission to be used to:

22 (i) implement and administer the new
23 technology research and development program for the purpose of
24 identifying, testing, and evaluating new emissions-reducing
25 technologies with potential for commercialization in this state and
26 to facilitate their certification or verification; and

27 (ii) contract with the Energy Systems

1 Laboratory at the Texas Engineering Experiment Station for \$216,000
2 annually for the development and annual computation of creditable
3 statewide emissions reductions obtained through wind and other
4 renewable energy resources for the state implementation plan; and

5 (3) two percent is allocated to the commission and 1.5
6 percent is allocated to the laboratory for administrative costs
7 incurred by the commission and the laboratory.

8 SECTION 2. Section 386.252, Health and Safety Code, is
9 amended by adding Subsections (e), (f), and (g) to read as follows:

10 (e) The commission may allocate unexpended money designated
11 for the Texas alternative fueling facilities program to other
12 programs described under Subsection (a) after the commission
13 allocates money to recipients under the alternative fueling
14 facilities program.

15 (f) Notwithstanding Subsection (a), the commission may
16 reallocate money in the fund if:

17 (1) the commission, in consultation with the governor
18 and the advisory board, determines that the use of the money in the
19 fund for the program established under Chapter 394 will cause the
20 state to be in noncompliance with the state implementation plan to
21 the extent that federal action is likely; and

22 (2) the commission finds that the reallocation of some
23 or all of the funding for the program established under Chapter 394
24 would resolve the noncompliance.

25 (g) Under Subsection (f), the commission may not reallocate
26 more than the minimum amount of money necessary to resolve the
27 noncompliance.

SECTION 3. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapters 393 and 394 to read as follows:

CHAPTER 393. ALTERNATIVE FUELING FACILITIES PROGRAM

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquified natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Program" means the Texas alternative fueling facilities program established under this chapter.

Sec. 393.002. PROGRAM. (a) The commission shall establish and administer the Texas alternative fueling facilities program to provide fueling facilities for alternative fuel in nonattainment areas. Under the program, the commission shall provide a grant for each eligible facility to offset the cost of those facilities.

(b) An entity that constructs, reconstructs, or acquires an alternative fueling facility is eligible to participate in the program.

Sec. 393.003. APPLICATION FOR GRANT. (a) An entity operating in this state that constructs, reconstructs, or acquires a facility to store, compress, or dispense alternative fuels may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional

1 planning agency created under Chapter 391, Local Government Code,
2 or a private nonprofit organization to apply for and receive a grant
3 to improve the ability of the program to achieve its goals.

4 (c) An application for a grant under this chapter must be
5 made on a form provided by the commission and must contain the
6 information required by the commission.

7 Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS.

8 (a) The commission by rule shall establish criteria for
9 prioritizing facilities eligible to receive grants under this
10 chapter. The commission shall review and revise the criteria as
11 appropriate.

12 (b) To be eligible for a grant under the program, the entity
13 receiving the grant must agree to make the alternative fueling
14 facility available to persons not associated with the entity at
15 times designated by the grant agreement.

16 (c) A recipient of a grant under this chapter is not
17 eligible to receive a second grant under this chapter for the same
18 facility.

19 Sec. 393.005. RESTRICTION ON USE OF GRANT. A recipient of a
20 grant under this chapter shall use the grant only to pay the costs
21 of the facility for which the grant is made. The recipient may not
22 use the grant to pay the recipient's administrative expenses.

23 Sec. 393.006. AMOUNT OF GRANT. For each eligible facility
24 for which a recipient is awarded a grant under the program, the
25 commission shall award the grant in an amount equal to the lesser
26 of:

27 (1) 50 percent of the sum of the actual eligible costs

incurred by the grant recipient within deadlines established by the
commission to construct, reconstruct, or acquire the facility; or

(2) \$500,000.

Sec. 393.007. EXPIRATION. This chapter expires August 31,
2018.

CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Texas Emissions
Reduction Plan Advisory Board.

(2) "Commission" means the Texas Commission on
Environmental Quality.

(3) "Executive director" means the executive director
of the Texas Commission on Environmental Quality.

(4) "Heavy-duty motor vehicle" means a motor vehicle
with:

(A) a gross vehicle weight rating of more than
8,500 pounds; and

(B) an engine certified to the United States
Environmental Protection Agency's standards for heavy-duty
engines.

(5) "Incremental cost" means the difference between
the manufacturer's suggested retail price of a baseline vehicle,
the documented dealer price of a baseline vehicle, cost to lease or
otherwise commercially finance a baseline vehicle, cost to repower
with a baseline engine, or other appropriate baseline cost
established by the commission, and the actual cost of the natural
gas vehicle purchase, lease, or other commercial financing, or

1 repower.

2 (6) "Medium-duty motor vehicle" means a motor vehicle
3 with a gross vehicle weight rating of more than 8,500 pounds that:

4 (A) is certified to the United States
5 Environmental Protection Agency's light-duty emissions standard;
6 or

7 (B) has an engine certified to the United States
8 Environmental Protection Agency's light-duty emissions standard.

9 (7) "Motor vehicle" has the meaning assigned by
10 Section 386.151.

11 (8) "Natural gas vehicle" means a motor vehicle that
12 receives not less than 75 percent of its power from compressed or
13 liquefied natural gas.

14 (9) "Program" means the Texas natural gas vehicle
15 grant program established under this chapter.

16 Sec. 394.002. PROGRAM. The commission shall establish and
17 administer the Texas natural gas vehicle grant program to encourage
18 an entity that has a heavy-duty or medium-duty motor vehicle to
19 repower the vehicle with a natural gas engine or replace the vehicle
20 with a natural gas vehicle. Under the program, the commission shall
21 provide grants for eligible heavy-duty motor vehicles and
22 medium-duty motor vehicles to offset the incremental cost for the
23 entity of repowering or replacing the heavy-duty or medium-duty
24 motor vehicle.

25 Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a
26 qualifying vehicle that may be considered for a grant under the
27 program if during the calendar year the entity:

(1) purchased, leased, or otherwise commercially
financed the vehicle as a new on-road heavy-duty or medium-duty
motor vehicle that:

(A) is a natural gas vehicle;

(B) is certified to current federal emissions
standards;

(C) replaces an on-road heavy-duty or
medium-duty motor vehicle of the same weight classification and
use; and

(D) is powered by an engine certified to:

(i) emit not more than 0.2 grams of nitrogen
oxides per brake horsepower hour; or

(ii) meet or exceed the United States
Environmental Protection Agency's Bin 5 standard for light-duty
engines when powering the vehicle; or

(2) repowered the on-road motor vehicle to a natural
gas vehicle powered by a natural gas engine that:

(A) is certified to current federal emissions
standards; and

(B) is:

(i) a heavy-duty engine that is certified
to emit not more than 0.2 grams of nitrogen oxides per brake
horsepower hour; or

(ii) certified to meet or exceed the United
States Environmental Protection Agency's Bin 5 standard for
light-duty engines when powering the vehicle.

(b) A heavy-duty or medium-duty motor vehicle is not a

qualifying vehicle if the vehicle or the natural gas engine
powering the vehicle:

(1) has been awarded a grant under this chapter for a
previous reporting period; or

(2) has received a similar grant or tax credit in
another jurisdiction if that grant or tax credit program is relied
on for credit in the state implementation plan.

Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity
operating in this state that operates a heavy-duty or medium-duty
motor vehicle may apply for and receive a grant under this chapter.

(b) An application for a grant under this chapter must be
made on a form provided by the commission and must contain the
information required by the commission.

(c) The commission, after consulting stakeholders, shall:

(1) simplify the application form; and

(2) minimize, to the maximum extent possible,
documentation required for an application.

Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission
by rule shall establish criteria for prioritizing qualifying
vehicles eligible to receive grants under this chapter. The
commission shall review and revise the criteria as appropriate
after consultation with the advisory board.

(b) To be eligible for a grant under the program:

(1) the use of the qualifying vehicle must be
projected to result in a reduction in emissions of nitrogen oxides
of at least 25 percent as compared to the motor vehicle or engine
being replaced, based on:

(A) the baseline emission level set by the commission under Subsection (g); and

(B) the certified emission rate of the new vehicle; and

(2) the qualifying vehicle must:

(A) replace a heavy-duty or medium-duty motor vehicle that:

(i) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission; or

(B) be a heavy-duty or medium-duty motor vehicle repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

1 (iii) satisfies any minimum percentage of
2 annual usage requirements established by the commission; and

3 (iv) is installed in an on-road vehicle
4 that, at the time of the vehicle's repowering, was in operating
5 condition and had at least two years of remaining useful life, as
6 determined in accordance with criteria established by the
7 commission.

8 (c) As a condition of receiving a grant, the qualifying
9 vehicle must be continuously owned, leased, or otherwise
10 commercially financed and registered and operated in the state by
11 the grant recipient until the earlier of the fourth anniversary of
12 the date of reimbursement of the grant-funded expenses or until the
13 date the vehicle has been in operation for 400,000 miles after the
14 date of reimbursement. Not less than 75 percent of the annual use
15 of the qualifying vehicle, either mileage or fuel use as determined
16 by the commission, must occur in:

17 (1) the counties any part of which are included in the
18 area described by Section 394.010(a); or

19 (2) counties designated as nonattainment areas within
20 the meaning of Section 107(d) of the federal Clean Air Act (42
21 U.S.C. Section 7407)).

22 (d) The commission shall include and enforce the usage
23 provisions in the grant contracts. The commission shall monitor
24 compliance with the ownership, leasing, and usage requirements,
25 including submission of reports on at least an annual basis, or more
26 frequently as determined by the commission.

27 (e) The commission by contract may require the return of all

1 or a portion of grant funds for a grant recipient's noncompliance
 2 with the usage and percentage of use requirements under this
 3 section.

4 (f) A heavy-duty or medium-duty motor vehicle replaced
 5 under this program must be rendered permanently inoperable by
 6 crushing the vehicle, by making a hole in the engine block and
 7 permanently destroying the frame of the vehicle, or by another
 8 method approved by the commission that permanently removes the
 9 vehicle from operation in this state. The commission shall
 10 establish criteria for ensuring the permanent destruction of the
 11 engine or vehicle. The commission shall enforce the destruction
 12 requirements.

13 (g) The commission shall establish baseline emission levels
 14 for emissions of nitrogen oxides for on-road heavy-duty or
 15 medium-duty motor vehicles being replaced by using the emission
 16 certification for the engine or vehicle being replaced. The
 17 commission may consider deterioration of the emission performance
 18 of the engine of the vehicle being replaced in establishing the
 19 baseline emission level. The commission may consider and establish
 20 baseline emission rates for additional pollutants of concern, as
 21 determined by the commission after consultation with the advisory
 22 board.

23 (h) Mileage or fuel use requirements established by the
 24 commission under Subsection (b)(2)(A)(ii) may differ by vehicle
 25 weight categories and type of use.

26 (i) The executive director shall waive the requirements of
 27 Subsection (b)(2)(A)(i) on a finding of good cause, which may

1 include short lapses in registration or operation due to economic
2 conditions, seasonal work, or other circumstances.

3 Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a
4 grant under this chapter shall use the grant to pay the incremental
5 costs of the replacement for which the grant is made, which may
6 include the initial cost of the natural gas vehicle or natural gas
7 engine and the reasonable and necessary expenses incurred for the
8 labor needed to install emissions-reducing equipment. The
9 recipient may not use the grant to pay the recipient's
10 administrative expenses.

11 Sec. 394.007. AMOUNT OF GRANT. (a) The commission shall
12 develop a grant schedule that:

13 (1) assigns a standardized grant in an amount between
14 60 and 90 percent of the incremental cost of a natural gas vehicle
15 purchase, lease, other commercial finance, or repowering;

16 (2) is based on:

17 (A) the certified emission level of nitrogen
18 oxides, or other pollutants as determined by the commission, of the
19 engine powering the natural gas vehicle; and

20 (B) the usage of the natural gas vehicle; and

21 (3) may take into account the overall emissions
22 reduction achieved by the natural gas vehicle.

23 (b) Not less than 60 percent of the total amount of grants
24 awarded under this chapter for the purchase and repowering of motor
25 vehicles must be awarded to motor vehicles with a gross vehicle
26 weight rating of at least 33,001 pounds. The minimum grant
27 requirement under this subsection does not apply if the commission

1 does not receive enough grant applications to satisfy the
2 requirement for motor vehicles described by this subsection that
3 are eligible to receive a grant under this chapter.

4 (c) A person may not receive a grant under this chapter
5 that, when combined with any other grant, tax credit, or other
6 governmental incentive, exceeds the incremental cost of the vehicle
7 for which the grant is awarded. A person shall return to the
8 commission the amount of a grant awarded under this chapter that,
9 when combined with any other grant, tax credit, or other
10 governmental incentive, exceeds the incremental cost of the vehicle
11 for which the grant is awarded.

12 (d) The commission shall reduce the amount of a grant
13 awarded under this chapter as necessary to keep the combined
14 incentive total at or below the incremental cost of the vehicle for
15 which the grant is awarded if the grant recipient is eligible to
16 receive an automatic incentive at or before the time a grant is
17 awarded under this chapter.

18 Sec. 394.008. GRANT PROCEDURES. (a) The commission shall
19 adopt procedures for:

20 (1) awarding grants under this chapter in the form of
21 rebates; and

22 (2) streamlining the grant application, contracting,
23 reimbursement, and reporting process for qualifying natural gas
24 vehicle purchases or repowers.

25 (b) Procedures adopted under this section must:

26 (1) provide for the commission to compile and
27 regularly update a listing of preapproved natural gas vehicles:

1 (A) powered by natural gas engines certified to
2 emit not more than 0.2 grams of nitrogen oxides per brake horsepower
3 hour; or

4 (B) certified to the United States Environmental
5 Protection Agency's light-duty Bin 5 standard or better;

6 (2) if a federal standard for the calculation of
7 emissions reductions exists, provide a method to calculate the
8 reduction in emissions of nitrogen oxides, volatile organic
9 compounds, carbon monoxide, particulate matter, and sulfur
10 compounds for each replacement or repowering;

11 (3) assign a standardized rebate amount for each
12 qualifying vehicle under Section 394.007;

13 (4) allow for processing rebates on an ongoing
14 first-come, first-served basis;

15 (5) provide for contracts between the commission and
16 participating dealers under Section 394.009;

17 (6) allow grant recipients to assign their grant funds
18 to participating dealers to offset the purchase or lease price;

19 (7) require grant applicants to identify natural gas
20 fueling stations that are available to fuel the qualifying vehicle
21 in the area of its use;

22 (8) provide for payment not later than the 30th day
23 after the date the request for reimbursement for an approved grant
24 is received;

25 (9) provide for application submission and
26 application status checks to be made over the Internet; and

27 (10) consolidate, simplify, and reduce the

1 administrative work for applicants and the commission associated
2 with grant application, contracting, reimbursement, and reporting
3 requirements.

4 (c) The commission, or its designee, shall oversee the grant
5 process and is responsible for final approval of any grant.

6 (d) Grant recipients are responsible for meeting all grant
7 conditions, including reporting and monitoring as required by the
8 commission through the grant contract.

9 Sec. 394.009. PARTICIPATING DEALERS. (a) In this section,
10 "participating dealer" means a person who:

11 (1) sells, leases, or otherwise commercially finances
12 on-road heavy-duty or medium-duty natural gas vehicles or
13 heavy-duty or medium-duty natural gas engines; and

14 (2) has satisfied all requirements established by the
15 commission for participation in the program as a dealer.

16 (b) A participating dealer must agree to the terms and
17 conditions of a standardized contract developed by the commission.

18 (c) A participating dealer shall:

19 (1) provide information regarding natural gas vehicle
20 grants to fleet operators;

21 (2) assist an applicant who purchases, leases, or
22 otherwise commercially finances a natural gas vehicle or engine
23 from the dealer with the completion of the application; and

24 (3) submit completed applications and documentation
25 to the commission on behalf of an applicant who purchases, leases,
26 or otherwise commercially finances a natural gas vehicle or engine
27 from the dealer.

1 (d) A participating dealer may not approve a grant.

2 (e) The commission shall:

3 (1) maintain and make available to the public online a
4 list of all qualified dealers; and

5 (2) establish requirements for participation in the
6 program by sellers of on-road heavy-duty or medium-duty natural gas
7 vehicles and heavy-duty or medium-duty natural gas engines.

8 Sec. 394.010. CLEAN TRANSPORTATION TRIANGLE. (a) To
9 ensure that natural gas vehicles purchased, leased, or otherwise
10 commercially financed or repowered under the program have access to
11 fuel, and to build the foundation for a self-sustaining market for
12 natural gas vehicles in Texas, the commission shall award grants to
13 support the development of a network of natural gas vehicle fueling
14 stations along the interstate highways connecting Houston, San
15 Antonio, Dallas, and Fort Worth. In awarding the grants, the
16 commission shall provide for:

17 (1) strategically placed natural gas vehicle fueling
18 stations in and between the Houston, San Antonio, and Dallas-Fort
19 Worth areas to enable a natural gas vehicle to travel along that
20 triangular area relying solely on natural gas fuel;

21 (2) grants to be dispersed through a competitive
22 bidding process to offset a portion of the cost of installation of
23 the natural gas dispensing equipment;

24 (3) contracts that require the recipient stations to
25 meet operational, maintenance, and reporting requirements as
26 specified by the commission; and

27 (4) a listing, to be maintained by the commission and

made available to the public online, of all natural gas vehicle fueling stations that have received grant funding, including location and hours of operation.

(b) The commission may not award more than:

(1) three station grants to any entity; or

(2) one grant for each station.

(c) Grants awarded under this section may not exceed:

(1) \$100,000 for a compressed natural gas station;

(2) \$250,000 for a liquefied natural gas station; or

(3) \$400,000 for a station providing both liquefied and compressed natural gas.

(d) Stations funded by grants under this section must be publicly accessible and located not more than three miles from an interstate highway system. The commission shall give preference to:

(1) stations providing both liquefied natural gas and compressed natural gas at a single location; and

(2) stations located not more than one mile from an interstate highway system.

(e) To meet the goals of this section, the commission may solicit grant applications under this section for a new fueling station in a specific area or location.

(f) Grants made under this section are not subject to the requirements of Sections 394.002 through 394.008. The commission shall develop an application package and review applications in accordance with Sections 386.110 and 386.111.

(g) The commission, in consultation with the natural gas

1 industry, shall determine the most efficient use of funding for the
2 station grants under this section to maximize the availability of
3 natural gas fueling stations.

4 Sec. 394.011. ADMINISTRATION OF PROGRAM. The commission
5 may contract with one or more entities for administration of the
6 program.

7 Sec. 394.012. EXPIRATION. This chapter expires August 31,
8 2017.

9 SECTION 4. The Texas Commission on Environmental Quality
10 shall adopt rules under Section 393.004, Health and Safety Code, as
11 added by this Act, as soon as practicable after the effective date
12 of this Act.

13 SECTION 5. The Texas Commission on Environmental Quality
14 shall adopt rules and establish procedures under Chapter 394,
15 Health and Safety Code, as added by this Act, as soon as practicable
16 after the effective date of this Act.

17 SECTION 6. To the extent of any conflict, this Act prevails
18 over another Act of the 82nd Legislature, Regular Session, 2011,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 7. This Act takes effect September 1, 2011.

S.B. No. 385

David Dewhurst

President of the Senate

Joe Straus

Speaker of the House

I hereby certify that S.B. No. 385 passed the Senate on April 4, 2011, by the following vote: Yeas 29, Nays 2; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 29, Nays 2.

Patsy Spaw

Secretary of the Senate

I hereby certify that S.B. No. 385 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 112, Nays 27, four present not voting.

Robert Haney

Chief Clerk of the House

Approved:

17 JUN '11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
JUN 17 2011
O'CLOCK

Boyd R. Roberts

Secretary of State